



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

By Email: drubenstein@apple.com

Debra Rubenstein
Senior Counsel, Environment, Health & Safety
Apple
One Apple Park Way
Cupertino, CA 95014

Re: Substantiation of CBI

Dear Debra Rubenstein:

The U.S. Environmental Protection Agency ("EPA" or "Agency") is seeking to determine the entitlement to confidentiality of the photographs and field notes created during EPA's visit to 825 Stewart Drive, Sunnyvale, CA on August 11, 2021. You have claimed (all *or* part) of this information as confidential business information ("CBI").

The purpose of this letter is to notify you that the EPA Office of Regional Counsel will be making an advance confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by file name, page, paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by you to be CBI contains a significant amount of information which our Office of Regional Counsel determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed without further notice to you.

In making its final confidentiality determination, the EPA will consider the relevant substantive criteria in its CBI regulations, under 40 C.F.R. § 2.208(a)-(d), as well as the U.S. Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media* (*Argus*), 139 S. Ct. 2356 (2019), which evaluated the definition of "confidential" as used in Exemption 4. In the *Argus* decision, the Court held that at least where "[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government

under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.” *Argus*, 139 S. Ct. at 2366.

Thus, for each item or class of information that you claim as CBI, please answer the following questions, giving as much detail as possible. EPA will use your responses to these questions to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Please explain why EPA should protect the information you claim as confidential for the time period specified in your answer to question #1.
3. Has EPA, another federal agency, or court made any determination as to the confidentiality of the information? If so, please attach a copy of the determination.
4. Is the information contained in any publicly available material such as patents or patent applications, publicly available databases (including state databases), promotional publications, annual reports, or articles? Yes/No

If you answered “yes”, please identify the publicly available information and its location (e.g., patent number or website address).

5. Has your company taken reasonable measures to protect the information claimed as CBI? If so, please identify the measure or internal controls your business has taken to protect the information claimed as confidential:
 - a. Non-disclosure agreement required prior to access. Yes/No
 - b. Access is limited to individuals with a need-to-know. Yes/No
 - c. Information is physically secured (e.g. locked in a room or cabinet) or electronically secured (encrypted, password protected, etc.). Yes/No
 - d. Other internal control measures(s). Yes/No. *(If yes, please explain.)*
6. Does your company customarily keep the information private or closely-held? If so, please explain the basis for your response.
7. At the time you submitted the information you claimed as CBI, did EPA provide any express or implied assurance of confidentiality? If so, please explain the specific

assurance(s) you received. For example, expressed assurances indicating that information will not be publicly disclosed could include legal authorities (regulation or statute), direct communications, class determinations, etc. Examples of implicit assurances could include a description of the specific context in which the information was received.

8. Did the Agency provide any expressed or implied indications at the time the information was submitted that EPA would publicly disclose the information?
9. If you believe any submitted information to be a trade secret, please state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be a trade secret.
10. Are there any means by which a member of the public could obtain access to the information or readily discover the information claimed as confidential through reverse engineering?
11. Explain any other issue or additional information you deem relevant to EPA's determination.

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s)*. Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be emailed to reynolds.rebekah@epa.gov, by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "CONFIDENTIAL" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

If you wish to claim any information that you provide in your response to this letter to be claimed as CBI, you must mark the response with "CONFIDENTIAL BUSINESS INFORMATION" or with a similar designation, and you must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at (415) 972-3916.

Sincerely,

Reynolds,
Rebekah

Digitally signed by
Reynolds, Rebekah
Date: 2021.08.26
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Assistant Regional Counsel
Office of Regional Counsel